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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,489	03/18/2004	Richard F. Barker JR.	41854-P002US	5706
39770	7590	11/02/2006		
SANFORD E. WARREN, JR. P.O. BOX 50784 DALLAS, TX 75201			EXAMINER SUERETH, SARAH ELIZABETH	
			ART UNIT 3749	PAPER NUMBER

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/803,489

Applicant(s)

BARKER ET AL.

Examiner

Sarah Suereth

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/18/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Response to Amendment***

1. Receipt of applicant's amendment filed on 7/21/06 is acknowledged.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

- a. A person shall be entitled to a patent unless -
- b. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,3, 6, 8, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hunts 6525298.

4. Hunts discloses a towel warming device having a drawer frame (1) with a pair of side rails (Figure 1, two side walls, connecting element 5 to the wall opposite the door), a door (2) moveably connected to the front of the side rails to be positioned between an open and closed position, a removable tray (7) capable of holding food, and a locking mechanism (4, 5) in connection between the side rails and the door.

5. Regarding claim 6, the door is hingedly connected to the side rails proximate the front end thereof (col. 6, line 41).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4, 5, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunts in view of Roberts et al.

8. As noted in the 35 U.S.C. 102(b) rejection, Hunts discloses a magnetic latch mechanism, but not the latch mechanism claimed in claims 4 and 5.

9. Roberts discloses a drawer having a latch mechanism comprising a keyhole shaped bracket (37), and a probe (45) that fits into the keyhole.

10. The Hunts specification states that a variety of latching mechanisms could be used to hold the door shut (col. 3, line 61).

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Hunts apparatus with the latching mechanism of Roberts as an available item used for its stated and intended purpose.

12. It was also obvious that the probe could have been placed on the door or the side rails, as a matter of design choice. The courts have held that rearrangement of parts is not a patentable distinction (In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975)). In this case, the position of the probe does not affect the operation of the device.

13. Claims 7, 13-15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koch in view of Shei et al 6644298.

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14. Koch describes a stove having a cabinet (1) having opposing side walls, a top wall, a bottom wall, a back wall, and a front wall defining a heating cavity (see "stove" col. 1, lines 49-51), the front wall defining an opening into the heating cavity; a heating source disposed within the heating cavity (see "stove" col. 1, lines 49-51); a drawer frame (9) having a pair of opposing side rails (14), each of the side rails having a front end and a terminal end (Fig. 1), the side rails being functionally connected with the side walls of the cabinet in a manner such that the drawer frame can be moved between an open position ("open" in Figure 1) wherein the drawer frame extends substantially exterior of the heating cavity through the opening and a closed position (Figure 2) wherein the drawer frame is positioned substantially within the heating cavity (col. 2, lines 71-73), the front end of the side rails being positioned proximate the front wall and the terminal end being positioned proximate the back wall when the drawer frame is in the closed position (Figures 1 and 2); a door (20) moveably connected to the side rails of the drawer frame, the door moveable between an open position and a closed position; and a locking mechanism (13, 22, 24) in connection between the door and the side rails of the drawer frame for selectively maintaining the door in the closed position.

15. Regarding claim 15, Figure 2 shows the door closed, and the opening is substantially sealed.

16. Koch does not disclose a food tray.

17. Shei et al discloses an oven including removable trays for warming food (element B).

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18. The courts have held that rearrangement of parts is not a patentable distinction (In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975)). It would have been within the ordinary skill of one in the art to move the Koch drawer apparatus to a location above the heating source, as shown, for example, in the Shei reference, which has a similarly situated tray () above a heat source, intended to be used as "a food warming tray".

19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the Koch apparatus with the Shei et al tray in order to keep food at a temperature high enough to prevent bacteria contamination (col. 5, lines 2-4).

20. In apparatus claims, the intended use of a "food warming tray" is given little patentable weight. The Koch in view of Shei apparatus has the claimed structure, and is capable of performing the intended use. (See In re Schrader, 22 F.3d 290, 297-98, 30 USPQ2d 1455, 1461-62 (Fed. Cir. 1994))

21. The method claim 18 is rejected because the prior art apparatus of Koch in view of Shei et al performs the identical steps as claimed.

22. Claims 16, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koch in view of Shei et al as applied above, and further in view of Roberts.

23. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Koch in view of Shei et al apparatus with the latching mechanism of Roberts as an available item used for its stated and intended purpose.

24. It was also obvious that the probe could have been placed on the door or the side rails, as a matter of design choice. The courts have held that rearrangement of parts is not a patentable distinction (*In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975)). In this case, the position of the probe does not affect the operation of the device.

25. The method claims 19 and 20 are rejected because the prior art apparatus of Koch/Shei et al in view of Roberts performs the identical steps as claimed.

### ***Response to Arguments***

26. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Koch discloses a tray located in an oven. Shei also discloses a tray in an oven, and teaches the tray being located above a heat source, and used to warm food. The combined teachings would suggest to one of ordinary skill in the art to use the Koch tray to warm food, as taught by Shei.

27. Regarding applicant's argument that Hunts does not suggest a drawer using the definition of "a boxlike compartment...that can be pulled out and pushed in", the Hunt boxlike compartment (1) is capable of being pushed out or pulled in if so desired. Regarding the argument that the Hunts tray is not removable, it is capable of being removed from the surrounding structure.

***Conclusion***

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

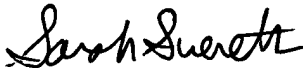
29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Suereth whose telephone number is (571) 272-9061. The examiner can normally be reached on Monday to Thursday 7:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Josiah Cocks can be reached on (571) 272-4874. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sarah Suereth  
Examiner  
Art Unit 3749

  
**JOSIAH C. COCKS**  
**PRIMARY EXAMINER**